UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

CRAIG BALIUS AND CAROL BALIUS — PLAINTIFFS

V. — CIVIL ACTION NO. 1:07CV674-LTS-RHW

STATE FARM FIRE AND CASUALTY COMPANY, ANY STATE FARM INSURANCE COMPANY AFFILIATE, AND JOHN DOES A-Z — DEFENDANTS

ORDER

Plaintiffs' counsel have taken the unusual step of asking this Court to clarify an order entered in other cases, but after reading the motion [64] and exhibits their plight is understandable and the relief they are requesting will be granted. Counsel for Defendant State Farm Fire and Casualty Company (State Farm) have adopted an extremely narrow, and in the Court's opinion incorrect, position on disqualification and clarification orders entered in *McIntosh v. State Farm Fire and Casualty Co.*, et al., No. 1:06cv1080 (docket entries [1173] and [1193]. What is especially disturbing is that defense counsel have taken it upon themselves to construe (or in this instance misconstrue) these orders, and on that ground have refused to conduct discovery or to meet their obligations to respond to discovery requests. They have acted unilaterally without seeking any guidance from the Court, and thwarted the Plaintiffs' legitimate discovery efforts, all without filing a motion for disqualification.

This cause of action was [1] removed to this Court on June 4, 2007. Plaintiffs' original and current lawyers are the principals in the law firm of Lumpkin & Reeves. In addition to the present defendants, State Farm VP Management Corp. and State Farm General Insurance Company (which have both been dismissed) were also parties. There has never been another named Defendant.

On April 4, 2008, the Court entered an [1173] Order of Disqualification and for the Exclusion of Evidence in McIntosh affecting "these firms and any other associated counsel . . . representing these plaintiffs or any other individuals who have claims against State Farm Fire and Casualty Company *and against E. A. Renfroe & Company, Inc.*, for property damage sustained in Hurricane Katrina in this case and in any other cases in the United States District Court for the Southern District of Mississippi; . . ." (Emphasis added). Plaintiffs in the affected cases were allowed a period of time to retain new counsel or proceed *pro se*.

On May 14, the Court entered an [1193] Order addressing the ability of Lumpkin & Reeves to represent plaintiffs encompassed by the [1173] original order. The Court determined that Lumpkin & Reeves "may not participate as counsel *in the actions affected by said opinion*

and order." (Emphasis added).

State Farm's and Renfroe's responses to Lumpkin & Reeves's motion for clarification in *McIntosh* are couched in terms of an association with the Katrina Litigation Group. Indeed, Lumpkin & Reeves candidly acknowledged that they had represented and currently represent "several policyholders in lawsuits and claims against State Farm arising out of Hurricane Katrina" and pointed out that "State Farm has never objected to Lumpkin & Reeves's involvement in those cases." The instant case, in which Renfroe is not and never has been a party, was specifically identified. (McIntosh docket entry [1188] at pp. 1-2).

While the Court did not agree with Lumpkin & Reeves's position in *McIntosh* as related to other KLG cases, their misplaced comments in *McIntosh* (docket entry [1191] at p. 2), have found a home in the instant case: "State Farm's interpretation of this court's order is far too expansive to have any practical impact . . . . State Farm's interpretation of this Court's order would require all attorneys who have discussed anything about any of the cases with KLG attorneys or staff to be deemed 'associate counsel' and disqualified. Such a reading is absurd."

It is undisputed that Lumpkin & Reeves have never been associated with the KLG on this case. According to the motion for clarification in the instant case:

> One of State Farm's law firms, Webb Sanders & Williams (hereinafter "Webb"), has deemed that said Order disqualifies [Lumpkin & Reeves] from involvement in any and all cases against State Farm.
>
> The [Plaintiffs] have attempted to proceed with necessary discovery in this case. However, at every turn, State Farm and its counsel have refused to cooperate. (See correspondence of March 14, 2008, March 27, 2008, March 28, 2008, April 7, 2008, April 16, 2008, April 21, 2008, May 14, 2008, and May 16, 2008 . . .).
>
> Not only has Webb refused to cooperate with [Lumpkin & Reeves], it refuses to cooperate with Matt Mestayer, of the law firm of Byrd & Wiser, who entered an appearance on behalf of the [Plaintiffs] in an effort to have this matter resolved. (Please see . . . correspondence dated June 9, 2008) . . . State Farm and Webb are attempting to arbitrarily decide who the [Plaintiffs] may hire as counsel.

A reading of the referenced communications from State Farm's counsel (May 15, May 23, and June 9) bears out these assertions. Substituting their judgment in dispositive terms crosses the line into the field of impropriety.

The final paragraph in a recent memorandum opinion in *Abney v. State Farm Fire and Casualty Co.*, No. 1:07cv711 (docket entry [163]) gains added significance in light of this conduct:

> In the hundreds of cases brought against State Farm by the SKG I have

> watched the property damage insurance claims, the contract claims at the heart [of] these cases, being pushed off their rightful place at center stage by the escalating heat of the battles among State Farm, Renfroe and the SKG. This conflagration has not advanced the interests of the policyholders nor the ultimate resolution of these cases. In many instances, the litigants' interests have been among the battlefield casualties. With the SKG having been disqualified as counsel in all the Court's remaining State Farm cases, it is my sincere hope that the type of normal, professional, and focused advocacy necessary to resolve the individual merits of the cases still outstanding will presently come to the fore.

That hope is not being realized in the instant case. It is unreasonable for defense counsel to take the position that Lumpkin & Reeves's disqualification in SKG/KLG cases carries over to this case or any other case in which SKG/KLG never appeared.

The Court is tempted to impose sanctions for defense counsels' breach of the principle espoused in *Abney* and their cavalier refusal to honor their discovery obligations. However, that would defeat the purpose of the above admonishment. There is no motion for sanctions before the Court in this case, just as there has never been a motion for disqualification. Still, all counsel are reminded that the Court will not hesitate to resort to Fed. R. Civ. P. 16, 37, or any other applicable authority to deter unjust delay. It is time and past time for the internecine and acrimonious warfare among the attorneys to stop and for the focus to shift to the task of resolving the many remaining cases on their merits. Anything short of this will not be tolerated.

In light of the above, **IT IS ORDERED**:

The [75] Motion to Clarify is **GRANTED**, and Plaintiffs' counsel may continue to serve as counsel of record in the instant cause of action.

SO ORDERED this the 20th day of June, 2008.

s/ L. T. Senter, Jr.
L. T. SENTER, JR.
SENIOR JUDGE